U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34831521

Date: DEC. 3, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a telematics systems engineer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an individual in the small percentage at the very top of the field. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a master's degree in engineering in Russia in 2012. From 2009 to 2022, the Petitioner worked as an engineer, testing and developing electronics systems for "the largest truck manufacturer in the Russian Federation." The Petitioner entered the United States in July 2022 as a B-2 nonimmigrant visitor. The Petitioner seeks employment as chief executive officer (CEO) of a company he founded that provides "tracking technology for the business-to-business (B2B) industry, fleet companies, and more."[1]

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claimed to have satisfied seven of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met three of the criteria, pertaining to judging, scholarly articles, and leading or critical roles. On appeal, the Petitioner asserts that he meets all seven claimed criteria.

Because the Petitioner submitted the required initial evidence, the Director conducted a final merits determination to evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. The purpose of a final merits determination is to analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are

[1] After he filed the present petition, the Petitioner filed another immigrant petition on his own behalf, seeking the same classification, in September 2024. That petition, with receipt number [redacted] was approved in October 2024.

sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.[2]

In denying the petition, the Director stated that, although the Petitioner had satisfied three evidentiary criteria, the evidence that met those criteria as a whole did not establish sustained national or international acclaim. Specifically, the Director made the following determinations:

- The Petitioner's activity as a judge of the work of others, satisfying 8 C.F.R. § 204.5(h)(3)(iv), was "based on his service as a reviewer of a couple of articles and a contest in 2023." The Director concluded that these few, recent instances of judging did not show that the Petitioner is "one of that small percentage who have risen to the top of their field of endeavor and has sustained national or international acclaim in the field."

- The Petitioner's publication of a "moderate" number of scholarly articles satisfies 8 C.F.R. § 204.5(h)(3)(vi), but the Petitioner had not shown that his publication history establishes extraordinary ability in his field.

- The Petitioner's position as "CEO of his company" is a leading or critical role for an organization with a distinguished reputation, but the Petitioner did not show that this role places him at "the very top of the field of endeavor and [demonstrates] sustained national or international acclaim."

Although the Director did not discuss evidence beyond the three granted criteria, the Director concluded by stating that "USCIS has . . . examined the entire record."

On appeal, the Petitioner asserts that, in the final merits determination, the Director "only analyzed evidence concerning the three granted criteria" instead of considering "the entire record."

Upon consideration of the complete record, we agree with the Director's determination that the Petitioner has not established sustained national or international acclaim as required. Below, we discuss additional evidence beyond the three granted criteria.

The Russian Union of Scientific and Engineering Public Associations Coordination Board conducted an "Engineer of the Year" competition in 2020. In the first round of the competition, the Petitioner was awarded the title [redacted] The certificate conveying that title indicates that it is "valid for 5 years." The presence of an expiration date appears to be more consistent with a professional credential or title rather than an award.

The number of awardees or prize recipients is a relevant consideration. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual. Materials in the record indicate that the Petitioner was one of 51 mechanical engineers, and 339 engineers overall, to earn the title [redacted] in 2020. In all, out of a pool of over 70,000 participants, 1,381 engineers received some type of accolades from the competition.

[2] *See generally* 6 *USCIS Policy Manual* F.2(B)(2) (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

The Petitioner submitted copies of materials from the awarding entity, and congratulatory messages from the Petitioner's employer after nine of its employees received various forms of recognition. But the Petitioner did not establish that he, as an individual, received recognition and attention indicative of sustained national or international acclaim when he and hundreds of others received the [redacted] title.

The Petitioner also asserted that $150,000 in venture capital for his U.S. company is a prize or award for excellence. We will take capital funding into account when considering an organization's reputation and an individual's remuneration. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner did not establish that the infusion of venture capital is a nationally or internationally recognized prize or award for excellence in the field of endeavor. A contract in the record indicates that the capital funding amounted to a purchase of equity in the Petitioner's company, subject to return, rather than a prize that would remain with the Petitioner.

Furthermore, the Petitioner did not establish that his company's infusion of venture capital received national or international recognition, a necessary component of a nationally or internationally recognized prize or award. The Petitioner's assertion that "venture capital funding more broadly [is] widely recognized" does not establish this particular instance of funding has the necessary recognition. The overall familiarity of the concept of venture capital does not suffice.

Also, the Petitioner did not establish that the $150,000 in venture capital he secured reflected sustained national or international acclaim, rather than the individual investor's confidence in the potential profitability of the Petitioner's new company. We can consider whether the funds are commensurate with funding rounds generally achieved for a startup's stage and industry. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). The Petitioner submitted excerpts from a 2016 report about venture capital, but did not include any statistics, such as the average size of a round of venture capital funding, that might have lent context to the amount of funding that the Petitioner's company secured. Therefore, the Petitioner did not show that securing $150,000 in venture capital funding indicates extraordinary ability in business.

The Petitioner was the subject of five articles that appeared in various online Russian-language media in 2022 and 2023. There are broad similarities between many of the articles, such as an emphasis on information that coincides with some of the regulatory criteria for extraordinary ability. All the articles were published after the Petitioner left Russia for the last time in January 2022; most were published in late 2023. The record does not show that the Petitioner attracted any Russian media coverage while he was in Russia.

One assertion that appears in a number of the submitted articles is that the Petitioner's membership in the Union of Machine Engineers constitutes "recognition of professional achievements and contribution in the field," language similar to the wording of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). We agree with the Director that the Petitioner did not establish that his memberships in the National Chamber of Engineers and the Union of Machine Engineers require outstanding achievements, as judged by recognized national or international experts, as the regulation requires. The Petitioner did not submit first-hand documentary evidence of membership requirements from the organizations themselves, and

the Petitioner did not establish the reliability of the assertions in the online articles that the Petitioner submitted instead of that evidence.

The Petitioner wrote five scholarly articles and published conference presentations in conjunction with his graduate studies. He wrote a sixth article that appeared in *Actual Researches* in 2023. In a final merits determination, USCIS may consider whether an individual's articles appeared in highly ranked journals and whether the articles have been heavily cited by others. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2). The Petitioner did not establish the impact of his published work in these ways. The articles themselves are not evidence of sustained national or international acclaim.

The Petitioner peer-reviewed manuscripts submitted for publication in *Actual Researches*. We agree with the Director that this activity constitutes judging the work of others, satisfying the requirements of 8 C.F.R. § 204.5(h)(3)(iv), but does not inherently establish sustained national or international acclaim. The Petitioner did not submit evidence to show how the journal selects peer reviewers.

The Petitioner was also invited to serve "as an honored member of the jury of the competition [redacted] based in part on "[r]eputation and achievements in the industry that confirm professional competence." The Petitioner did not submit evidence to establish the significance of the competition. The competition's own promotional materials do not suffice in this regard. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO (C.D. Cal. July 6, 2007) aff'd 2009 WL 604888 (9th Cir. 2009) (concluding that a magazine publisher's self-serving assertions are not reliable evidence of the magazine's status as major media).

Also, the [redacted] competition had not yet taken place when the Petitioner filed the petition in February 2024. A petitioner must meet all eligibility requirements at the time of filing the petition. 8 C.F.R. § 103.2(b)(1).

The Petitioner showed that his work improved models of vehicles produced by his employer in Russia, but the Petitioner did not demonstrate that this work went beyond the expected role of a mechanical engineer and had wider repercussions in the industry, resulting in recognition rising to the level of sustained national or international acclaim. Letters from collaborators and employers are not direct evidence of the wider recognition that the statute and regulations demand.

The Director acknowledged the Petitioner's critical role for organizations or establishments with distinguished reputations, but concluded that the Petitioner had not shown that these roles resulted in broader recognition commensurate with sustained national or international acclaim. We agree with the Director that the Petitioner has not established a wider pattern of recognition. We also observe that the Petitioner's U.S. company appears to be in an early startup phase, and the Petitioner has not established that this new company has earned a distinguished reputation.

The Petitioner submitted letters from several individuals discussing a platform that the Petitioner developed. These individuals have business relationships with the Petitioner, by employing him, collaborating with him, or investing in his company. These letters shed light on the nature of the Petitioner's accomplishments, but do not serve as first-hand evidence of acclaim and recognition beyond those who have worked with him.

Also, the letters contain descriptions of the Petitioner's contributions to particular projects, but do not show how the Petitioner's work has led to national or international acclaim in his field. For example, one of the Petitioner's collaborators asserted that the Petitioner helped to develop a telematics platform that "is pivotal for the transportation industry," but did not show that the system has been widely implemented and that the Petitioner's work on the platform has resulted in recognition beyond his employers and collaborators.

Statements in such letters should be corroborated by documentary evidence in the record. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3). Therefore, assertions regarding specific instances of impact on the field have little weight without corroborating evidence.

III. CONCLUSION

We have reviewed the record in the aggregate, and it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown a degree of recognition of his work that indicates the required sustained national or international acclaim and demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.